

File Number  
CP03-057

Application Type  
Conditional Use Permit

Council District  
7

Planning Area  
South San José

Assessor's Parcel Number(s)  
455-02-001

## STAFF REPORT

### PROJECT DESCRIPTION

Completed by: Mike Mena

Location: Northeast corner of Barnard and Pomona Avenues

Gross Acreage: 0.32

Net Acreage: 0.32

Net Density: n/a

Existing Zoning: HI Heavy Industrial

Existing Use: Vacant

Proposed Zoning: No change

Proposed Use: Corporation yard, construction of 2,208 square-foot office building and associated outdoor uses.

### GENERAL PLAN

Completed by: MM

Land Use/Transportation Diagram Designation  
Heavy Industrial

Project Conformance:  
☒ Yes ☐ No  
☐ See Analysis and Recommendations

### SURROUNDING LAND USES AND ZONING

Completed by: MM

North: Industrial

HI Heavy Industrial

East: Residential/Trailer Park

RM-MH

South: Industrial

HI Heavy Industrial

West: Industrial

HI Heavy Industrial

### ENVIRONMENTAL STATUS

Completed by: MM

☐ Environmental Impact Report adopted  
☐ Negative Declaration circulated on  
☐ Negative Declaration adopted on

☒ Exempt  
☐ Environmental Review Incomplete

### FILE HISTORY

Completed by: MM

CONTACT	APPLICANT/OWNER	
The Helen James Company Attn: Andre Hunt 1020 Feller Avenue, Suite 100 San José, CA 95127	Benitez Concrete Construction Attn: Janell Benitez 5387 Pontiac Drive San José, CA 95123	

## PUBLIC AGENCY COMMENTS RECEIVED

Completed by: MM

Department of Public Works

See Attached

Other Departments and Agencies

None.

## GENERAL CORRESPONDENCE

None.

## ANALYSIS AND RECOMMENDATIONS

**BACKGROUND**

The applicant, Benitez Concrete Construction, is requesting a Conditional Use Permit to allow for a construction/corporation yard including the construction of one 2,208 square foot office building. A Conditional Use Permit for construction/corporate yards in the HI Heavy Industrial Zoning District requires a Conditional Use Permit. The applicant had applied concurrently for a Development Variance to allow a side setback of less than 25 feet adjacent to the existing residential use. Staff has determined that the project will conform to the side and rear setback exception in the HI Heavy Industrial District. The applicant has therefore withdrawn the Development Variance application.

The project site is located on the northeast corner of Barnard and Pomona Avenues and is currently vacant. The site is located in an area of District 7 that is referred to as the Monterey Corridor. This sub-area of the City consists of predominantly industrial and industrial serving uses. Heavy industrial uses border the project site on three sides and a residential trailer park occupies the adjoining property to the east.

**ENVIRONMENTAL REVIEW**

Under the provisions of Section 15322 of the State Guidelines for Implementation of the California

existing 35-unit mobile home park. The construction/corporation yard proposes office activities and storage of materials and equipment that are to be conducted within the proposed building and does not propose the use of any hazardous materials. The site is generally surrounded by other industrial uses with similar characteristics with the exception of the existing residential trailer park to the east.

The proposed project is consistent with the General Plan Policies designed to preserve older established industrial areas of San José that contain these types of uses, such as the Monterey Corridor area. The Monterey Corridor area is important to the overall economic development strategy of the City. The project is additionally consistent with the City's policies intended to protect existing residential uses/neighborhoods from non-compatible land uses, in that all activities and storage of construction materials are to be conducted within the proposed building (see discussion below).

## ANALYSIS

The main issues associated with the project are land use compatibility and conformance to the Zoning Ordinance Performance Standards. Appropriateness of the proposed project within the existing neighborhood context is a key consideration for a Conditional Use Permit application.

***Project Setting.*** As stated previously the project site is located within an already established industrial area known as the Monterey Corridor and is located in the HI-Heavy Industrial Zoning District. This zoning district conforms to the site's General Plan Land Use/Transportation Diagram of Heavy Industrial. Parcels located adjacent to and across the street from the subject site are also located in the HI-Heavy Industrial Zoning District, and the uses on these parcels are currently industrial, with the exception of the mobile home park located to the east of the project site.

***Site Layout and land use compatibility.*** The proposed project has been substantially altered from the original plan to address interface issues and minimize impacts with the adjacent residential use (residential trailer park). The proposed office/storage building is located adjacent to the residential property line to screen the more intensive uses (i.e., parking, circulation, loading and storage areas). A concrete-block retaining wall, seven feet in height, is also located long the easterly (residential) property line of the site in order to visually and acoustically buffer the activities of the corporate yard. In addition, an employee rest area, pedestrian walkway and substantial landscaping have been incorporated into the design to create a more compatible interface with the adjacent residential use.

The Industrial Design Guidelines specify that a five-foot landscape strip should be provided on all exposed interior property lines. The project as proposed does not incorporate this five-foot landscape strip. Planning staff has proposed a condition, to which the project proponent and the developer has agreed to incorporate an additional perimeter landscaping strip (five feet) with ballards along the

under Section 20.50.240, when such a reduced setback will have no greater negative effect on the residential property than would the 25-foot setback. The Industrial Design Guidelines recommend that the adjacent residential uses be screened and buffered by a minimum of a 10-foot landscape strip and a seven-foot solid masonry wall. The applicant instead is proposing a five-foot setback from the adjacent residential use with minimal landscaping coverage. Planning staff has determined that the strict adherence to the Guidelines is necessary in this instance to protect the adjoining residences from the proposed industrial use. Staff supports a reduced, heavily landscaped 10-foot setback in conjunction with trees and a solid masonry wall. The placement of the building adjacent to the residential use and the incorporation of the ten-foot setback and masonry wall will: (1) protect the privacy of the adjacent residential use by adequately screening the parking, circulation and storage areas and (2) reduce noise levels from outdoor activities on the site. Staff believes the 10-foot reduced setback which allows the placement of the office building on the eastern edge of the site is preferable and a better interface to the trailer park than a 25-foot setback with the building relocated to elsewhere on the site. Therefore, Staff supports the use of the HI Zoning district setback exception for this project.

The surrounding existing industrial uses do not feature the landscaped setbacks and wall recommended by staff for the subject property. However, existing uses were developed prior to the adoption of the relevant design guidelines, and should not be used as the standard against which this project should be considered.

**Parking.** Minimum on-site parking requirements are determined by the use of the structure on the project site. The primary use of the structure is for office and equipment storage, and therefore results in a requirement of a minimum of eight (8) on-site parking spaces. The proposed project exceeds the required minimum number of on-site parking spaces with 14 spaces provided.

**Building Design.** The Industrial Design Guidelines have specific recommendations for building design. The Guidelines require that the scale of new buildings should be compatible with the scale, mass and character of the adjacent uses. The proposed architecture is designed to be more compatible with its adjacent residential uses rather than the surrounding tilt-up industrial warehouse structures, which make up the majority of the surrounding area. The proposed building is a single story office and storage building with horizontal siding and a pitched roof. Additional architectural attention has been given to the design of the structure with the inclusion of a decorative block wall planter and trellis at the building's entrance.

## CONCLUSION

Because of the wide mix of existing industrial uses located in the immediate area and the project's overall performance with the Industrial Design Guidelines and the Zoning Ordinance, staff has

## **PUBLIC OUTREACH**

Notices of the public hearing were distributed to the owners and tenants of all properties located within 500 feet of the project site. Staff has been worked with the neighboring property owner to the north and the project proponent to address site design concerns regarding parking and storage of equipment along the northerly property line. As indicated in the report above, the project proponent will be required to incorporate changes to the site plan to add a five-foot landscape strip with bollards. Staff has been available for questions from other interested parties and the public.

## **RECOMMENDATION**

The Planning staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution:

Planning Commission finds that the following are the relevant facts regarding this proposed project:

1. This site has a designation of Heavy Industrial on the adopted San José 2020 General Plan Land Use/Transportation Diagram.
2. The project site is located in the HI Heavy Industrial Zoning District.
3. Under the provisions of Section 15332 of CEQA this project is exempt from the environmental review requirements of Title 21 of the San José Municipal Code, implementing the California Quality Act of 1970, as amended.
4. The project is located on the northeasterly corner of Pomona Avenue and Barnard Avenue. Industrial uses are located on three side of the subject and a mobile home park is located to the east.
5. A construction/corporate yard is a conditional use under the HI Heavy Industrial Zoning District.
6. The project proposes to construct a 2,208 square foot office and storage building with a seven-foot screening wall.
7. The project site is 0.32 gross acres in area.
8. All structures, parking and storage areas are setback a minimum of 15 feet from the front and corner side property lines and are a minimum of 10 feet from the adjacent residential property line.

residential use by adequately screening the parking, circulation and storage areas and reducing noise levels from outdoor activities on the site.

This Planning Commission concludes and finds, based upon an analysis of the above facts that:

1. The proposed project is consistent with the adopted San José 2020 General Plan Land Use/Transportation Diagram of the City of San José.
2. The proposed project complies with all applicable provisions of the Zoning Ordinance.
3. The proposed project is in compliance with the California Environmental Quality Act.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds that:

1. The proposed use at the location requested will not
  - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area; or
  - b. Impair the utility or value of property of other persons located in the vicinity of the site; or
  - c. Be detrimental to public health, safety or general welfare; and
2. The proposed site is adequate in size and shape to accommodate the yards, walls, fences, parking and loading facilities, landscaping and other development features prescribed in this title, or as is otherwise required in order to integrate said use with the uses in the surrounding areas; and
3. The proposed site is adequately served:
  - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quality of traffic such use would generate; and
  - b. By other public or private service facilities as are required.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except

conditions shall have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. **Acceptance and Payment of Recording Fees.** The "Acceptance of Permit and Conditions" form shall be **signed, notarized, and returned** to the Department of City Planning within **60 days** from the date of issuance of the resolution granting the permit. *Failure to do so will result in this permit automatically expiring regardless of any other expiration date contained in this permit.* Fees for recording a Certificate of Permit with the Recorder for the County of Santa Clara must be submitted along with the Acceptance Form.
2. **Site Development Permit.** This permit fulfills the requirement for a Site Development Permit.
3. **Plan Revisions.** Within 60 days of the issuance of this Permit and prior to recordation, the Applicant shall revise the project plans to include the item(s) listed below to the satisfaction of the Director of Planning.
  - a. A five-foot wide landscape strip along the northerly property line with bollards painted green to match landscaping and a 10-foot wide landscape strip with trees along the residential property line.
  - b. Trash enclosure detail including a cover/roof to prevent water run-on to the area.
  - c. Access gate to the rear of the proposed building that swings outward for life and safety purposes in the case of fire or structural failure.
  - d. Detailed lighting plan, which conforms to the City Council's Outdoor Lighting Policy.

## CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below-enumerated conditions throughout the life of the permit:

1. **Sewage Treatment Demand.** Chapter 15.12 of Title 15 of the San José Municipal Code requires that all land development approvals and applications for such approvals in the City of San José shall provide notice to the applicant for, or recipient of, such approval that no vested right to a Building Permit shall accrue as the result of the granting of such approval when and if the City Manager makes a determination that the cumulative sewage treatment demand of the San José-Santa Clara Water Pollution Control Plant represented by approved land uses in the area served by said Plant will exceed the total sewage treatment

dated November 2003, on file with the Department of City Planning and Building and to the San José Building Code (San José Municipal Code, Title 24).

3. **Nuisance.** This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City.
4. **Construction Hours.** Construction shall be limited to the hours of 7:00 a.m. to 7:00 p.m. Monday through Friday for any on-site or off-site work within 500 feet of any residential unit.
5. **Lighting.** On-site lighting shall use Low-Pressure Sodium fixtures and be designed, controlled and maintained so that no light source is visible from outside of the property. Lighting fixtures shall not exceed 18 feet in height.
6. **Landscaping.** Planting and irrigation are to be provided, as indicated on the final Approved Plan Set. Landscaped areas shall be maintained and watered and all dead plant material is to be removed and replaced by the property owner. Irrigation is to be installed in accordance with Part 4 of Chapter 15.10 of Title 15 of the San José Municipal Code, Water Efficient Landscape Standards for New and Rehabilitated Landscaping and the City of San José Landscape and Irrigation Guidelines
7. **Certification.** Pursuant to San José Municipal Code, Section 15.10.486, certificates of substantial completion for landscape and irrigation installation shall be completed by licensed or certified professionals and provided to the Department of Planning, Building and Code Enforcement prior to approval of the final inspection of the project.
8. **Refuse.** All trash areas shall be effectively screened from view and covered and maintained in an orderly state to prevent water from entering into the garbage container. No outdoor storage is allowed/permitted unless designated on the approved plan set. Trash areas shall be maintained in a manner to discourage illegal dumping.
9. **Colors and Materials.** All colors and materials are to be those specified on the approved plan set.
10. **Outside Storage.** No outside storage is permitted for the project except in areas designated on the approved plan set.
11. **Sign Approval.** No signs are approved at this time. All proposed signs shall be subject to approval by the director of Planning.
12. **Tree Removals.** No tree larger than 56 inches in circumference, at a height of 24 inches above the



14. **Public Works Clearance.** A Development Clearance shall be obtained from the Public Works Department, Room 308, (408) 277-5161, and is subject to the following requirements (3-02626) to the satisfaction of the Director of Public Works:
- a. **Construction Agreement:** The public improvements conditioned as part of this permit require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered plans, bonds, insurance, a completed deposit, and engineering and inspection fees.
  - b. **Sewage Fees:** In accordance with City Ordinance all storm sewer area fees, sanitary sewer connection fees, and sewage treatment plant connection fees, less previous credits, are due and payable.
  - c. **Grading/Geology:**
    - 1) A grading permit is required prior to the issuance of a Public Works Clearance. The construction operation shall control the discharge of pollutants (sediments) to the storm drain system from the site. An erosion control plan may be required with the grading application.
    - 2) The project is within the State of California Seismic Hazard Zone. A soil investigation report addressing the potential hazard of liquefaction must be submitted to, reviewed and approved by the City Geologist prior to issuance of a grading permit or Public Works Clearance. The investigation should be consistent with the guidelines published by the State of California (CDMG Special Publication 117) and the Southern California Earthquake Center ("SCEC" report). A recommended depth of 50 feet should be explored and evaluated in the investigation.
  - d. **Undergrounding:** The In Lieu Undergrounding Fee shall be paid to the City for all frontage adjacent to Barnard Avenue prior to issuance of a Public Works clearance. 100 percent of the base fee in place at the time of payment will be due. (Currently, the base fee is \$224 per linear foot of frontage.)
  - e. **Electrical:**
    - 1) Installation of electrician(s) along project frontages.

f. **Landscape:**

- 1) Install street trees within the public right-of-way along the entire street frontage per City standards.
- 2) The locations of the street trees will be determined at the street improvement stage. Street trees shown on this permit are conceptual only.
- 3) Contact the City Arborist at (408) 277-2756 for the designated street tree.

g. **Street Improvements:**

- 1) Remove and replace broken or uplifted curb, gutter, and sidewalk along project frontage on Pomona Avenue.
- 2) Remove and replace curb, gutter, and sidewalk along project frontage.
- 3) Close unused driveway cut(s).
- 4) Proposed driveway width to be 26'.
- 5) Install handicap ramp at the corner of Barnard Avenue and Pomona Avenue.
- 6) Dedication and improvement of the public streets to the satisfaction of the Director of Public Works.
- 7) Reconstruct half street along Pomona Avenue frontage including curb, gutter, sidewalk, and pavement sections.
- 8) Repair, overlay, or reconstruction of asphalt pavement may be required. The existing pavement will be evaluated with the street improvement plans and any necessary pavement restoration will be included as part of the final street improvement plans.

- h. **Construction Agreement:** The applicant will be required to obtain a Public Works Clearance prior to the issuance of a Building Permit. The clearance will require the execution of a Construction Agreement that guarantees the completion of the public improvements to the satisfaction of the Director of Public Works. This agreement includes privately engineered

- 1) Installation. The inlet filters shall be installed by a qualified individual in conformance with the manufacturer's specifications. Installation records shall be maintained by the project developer and subsequent property owner.
  - 2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the inlet filters.
  - 3) Regular Sweeping. Paved surfaces subject to runoff shall be swept regularly during dry periods to remove dirt, silt, and other loose debris.
  - 4) Regular Inspections. The inlet filters shall be inspected monthly between September and April, and the absorbent material shall be replaced as necessary by a qualified individual to ensure the filters are functioning properly.
  - 5) Replacement of Absorbent Material. A qualified individual shall replace the absorbent material in conformance with the manufacturer's specifications. Care should be taken to avoid spilling the contaminated material into the drainage system.
  - 6) Disposal of Used Absorbent Material. Used absorbent material shall be disposed of in conformance with all applicable local, state, and federal regulations.
  - 7) Replenishment of Absorbent Materials Supply. The property owner shall keep a sufficient amount of absorbent material on hand to replace the amount of installed absorbent material plus a reserve to handle emergencies.
- j. **Maintenance Program.** The project development shall implement a maintenance program from these storm water interceptors that includes but is not limited to the following measures:
- 1) Installation. A qualified individual in conformance with the manufacturer's specifications shall install the storm water interceptors. Installation records shall be maintained by the project developer and subsequent property owners.
  - 2) Maintenance Record. The property owner must keep a record available for inspection on the project site of all inspections and maintenance of the storm water interceptors.
  - 3) Regular Sweeping. Paved surfaces subject to runoff should be swept regularly during dry periods to remove dirt, silt and other loose debris.

- b. *Emergency Address Card.* The project developer shall file an Emergency Address Card, Form 200-14, with the City of San José Police Department.
  - c. *Archaeology.* Pursuant to Section 7050.5 of the Health and Safety Code, and Section 5097.94 of the Public Resources Code of the State of California in the event of the discovery of human remains during construction, there shall be no further excavation or disturbance of the site or any nearby area reasonably suspected to overlie adjacent remains. The Santa Clara County Coroner shall be notified and shall make a determination as to whether the remains are Native American. If the Coroner determines that the remains are not subject to his authority, he shall notify the Native American Heritage Commission who shall attempt to identify descendants of the deceased Native American. If no satisfactory agreement can be reached as to the disposition of the remains pursuant to this State law, then the land owner shall re-inter the human remains and items associated with Native American burials on the property in a location not subject to further subsurface disturbance.
16. **Anti-Graffiti.** The applicant shall remove all graffiti from structures and fence surfaces within 48 hours of defacement.
17. **Short term Construction Air Impacts.** Precautions should be taken during construction activities. While the project is under construction, the developer shall implement effective dust control measures to prevent dust and other airborne matter from leaving the site. BAAQMD has prepared a list of feasible construction dust control measures that can reduce construction impacts to a level that is less than significant. The following construction practices should be implemented during all phases of construction on the project site. With the inclusion of these mitigation measures, the short-term air quality impacts associated with construction will be reduced to less-than significant levels.
- a. Use dust-proof chutes for loading construction debris onto trucks.
  - b. Water to control dust generation during demolition of structures and break-up of pavement.
  - c. Cover all trucks hauling demolition debris from the site.
  - d. Ware or cover stockpiles of debris, soil, sand, or other materials that can be blown by the wind.
  - e. Cover all trucks hauling soil, sand, or loose materials, or required trucks to maintain at least two feet of freeboard

- i. Install sandbags or other erosion control measures to prevent silt runoff to public roadways.
- j. Replant vegetation in disturbed areas as quickly as possible.

18. **Construction Conformance.** A project construction conformance review by the Planning Division is required. Planning Division review for project conformance will begin with the initial plan check submittal to the Building Division. Prior to final inspection approval by the Building Department, Developer shall obtain a written confirmation from the Planning Division that the project, as constructed, conforms with all applicable requirements of the subject Permit, including the plan sets. To prevent delays in the issuance of Building Permits, please notify Planning Division staff at least one week prior to the final Building Division inspection date.

#### **CONDITIONS SUBSEQUENT**

1. **Permit Expiration.** This Conditional Use Permit shall automatically expire two years from and after the date of adoption of the Resolution by the Planning Commission, or by the City Council on appeal, granting this Permit, if within such two-year period, the proposed use of this site or the construction of buildings has not commenced, pursuant to and in accordance with the provisions of this Conditional Use Permit. The date of adoption is the date the Resolution granting this Conditional Use Permit is approved by the Planning Commission. However, the Director of Planning may approve a Permit Adjustment to extend the validity of this Permit for a period of up to two years. The Permit Adjustment must be approved prior to the expiration of this Permit.
2. **Revocation, Suspension, Modification.** This Conditional Use Permit may be revoked, suspended or modified by the Planning Commission, or by the City Council on appeal, at any time regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 3, Chapter 20.44, Title 20 of the San José Municipal Code it finds:
  - a. A violation of any conditions of the Conditional Use Permit was not abated, corrected or rectified within the time specified on the notice of violation; or
  - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on the notice of violation; or
  - c. The use as presently conducted creates a nuisance.